

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

JAVON MARSHALL, *et al.*, individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

ESPN, INC., *et al.*,

Defendants.

Civil Action No. 3:14-cv-01945

Chief District Judge Kevin H. Sharp

**LICENSING DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

Defendants Outfront Media Sports, Inc. (f/k/a CBS Collegiate Sports Properties, Inc.);<sup>1</sup> IMG Worldwide, LLC (erroneously identified in the Complaint as “IMG Worldwide, Inc.”); IMG College, LLC; William Morris Endeavor Entertainment, LLC (erroneously identified in the Complaint as “William Morris Endeavors, LLC”); JMI Sports LLC; Learfield Sports LLC; T3 Media, Inc.; and TeleSouth Communications, Inc.<sup>2</sup> (collectively, the “Licensing Defendants”) move this Court pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss Plaintiffs’ Complaint for failure to state a claim upon which relief may be granted.

In this putative class action, Plaintiffs – ten former college football and basketball players – complain that they have not been paid for the use of their names, images and likenesses in connection with televised broadcasts of college sports events in which they allegedly have

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<sup>1</sup> Outfront Media Sports, Inc. (f/k/a CBS Collegiate Sports Properties, Inc.) joins in this Motion subject to and without waiver of its separate motion to dismiss for lack of personal jurisdiction.

<sup>2</sup> TeleSouth Communications, Inc. joins in this Motion subject to and without waiver of its separate motion to dismiss for lack of personal jurisdiction.

appeared. On this basis, Plaintiffs' Complaint purports to assert causes of action against the Licensing Defendants, as well as the "Broadcasting Defendants" (who more accurately refer to themselves as "Network Defendants") and the Conference Defendants, for violation of Section 1 of the Sherman Act, violations of Plaintiffs' purported rights of publicity, and other tagalong claims based upon Plaintiffs' purported publicity rights. *See* Complaint at Introduction, ¶¶ 1-3 (ECF No. 1).

The Licensing Defendants submit that the Plaintiffs' claims against them should be dismissed for the following reasons:

1. The Network Defendants and the Conference Defendants have separately moved for dismissal for failure of the Complaint to state a claim against those Defendants, and have set forth various grounds for their respective motions. To avoid duplication, pursuant to Fed. R. Civ. P. 10(c), the Licensing Defendants hereby incorporate by this reference the grounds set forth in the Network Defendants' Motion to Dismiss and supporting Memorandum of Law and in the Conference Defendants' Motion to Dismiss and supporting Memorandum of Law – filed concurrently with this Motion, which grounds apply equally as bases for dismissal of the claims alleged against the Licensing Defendants, including without limitation that 1) under Tennessee law, Plaintiffs have no publicity rights in the broadcasts of sporting events or in advertisements for such broadcasts; 2) Plaintiffs' state law causes of action are preempted by federal copyright law and barred by the First Amendment and the Tennessee Constitution; 3) Plaintiffs have failed to state a claim under the Lanham Act; and 4) Plaintiffs fail to plead multiple essential elements of an antitrust claim. To the extent the Network Defendants and the Conference Defendants state in their Motions and supporting Memoranda that the Complaint lacks a legally sufficient

allegation that those Defendants engaged in certain conduct, the Licensing Defendants assert the same reasons as to themselves.

2. In further support of the grounds for dismissal submitted by the other Defendants, the Licensing Defendants amplify and add that the United States Supreme Court has already conclusively resolved the antitrust issue in the Complaint, inasmuch as it held that the NCAA's amateurism rules, which Plaintiffs allege are anti-competitive, do not violate the Sherman Act and, in fact, are pro-competitive.

3. Other grounds are specifically reserved in the footnote below, in consideration of the grounds raised by all Defendants and the length of the briefs submitted by the three Defendant groups.<sup>3</sup>

4. In support of this Motion to Dismiss, the Licensing Defendants submit a separate memorandum of law, which incorporates the memoranda of law filed by the Conference Defendants and the Network Defendants. In addition, the Defendants have filed a Joint Notice of Filing of unpublished and other authorities.

Based upon the foregoing grounds, upon the Licensing Defendants' Memorandum of Law, and upon the motions and memoranda filed by the Network Defendants and the Conference Defendants, the above identified Licensing Defendants move the Court to enter its order dismissing the Complaint with prejudice and at the cost of Plaintiffs.

The Filing User hereby represents that all signatories hereto agree to the filing of this document.

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<sup>3</sup> Certain of the Licensing Defendants, IMG Worldwide, LLC, IMG College, LLC, and William Morris Endeavor Entertainment, LLC join in this Motion subject to and without waiver of a separate defense of release.

Dated: December 10, 2014

Respectfully submitted,

/s/ W. Scott Sims

**SIMS FUNK, PLC**

W. Scott Sims

ssims@simsfunk.com

3310 West End Avenue

Suite 410

Nashville, TN 37203

Tel: (615) 292-9335

Fax: (615) 649-8565

- and -

**JENNER & BLOCK LLP**

Richard L. Stone

rstone@jenner.com

David R. Singer

dsinger@jenner.com

633 West 5th Street Suite 3600

Los Angeles, CA 90071-2054

Tel: (213) 239-5100

Fax: (213) 239-5199

Kenneth L. Doroshow

kdoroshow@jenner.com

1099 New York Avenue, NW

Suite 900

Washington, DC 20001-4412

Tel: (202) 639-6027

Fax: (202) 661-4855

*Attorneys for Defendants IMG Worldwide, LLC; IMG  
College, LLC; and William Morris Endeavor  
Entertainment, LLC*

*/s/ Louis P. Petrich, with permission*

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**LEOPOLD, PETRICH & SMITH, P.C.**

Louis P. Petrich

lpetrich@lpsla.com

Daniel M. Mayeda

dmayeda@lpsla.com

2049 Century Park East, Suite 3110

Los Angeles, CA 90067

Tel: 310-277-3333

Fax: 310-277-7444

- and -

**EVERHART LAW FIRM PLC**

Amy J. Everhart

amy@everhartlawfirm.com

Maria A. Spear

maria@everhartlawfirm.com

1400 Fifth Avenue North

Nashville, TN 37208

Tel: (615) 800-8919

Fax: (615) 800-8918

*Attorneys for Defendant JMI Sports LLC*

/s/ Walker W. Jones, III, with permission

**BAKER, DONELSON, BEARMAN, CALDWELL  
& BERKOWITZ, PC**

Walker W. Jones, III  
wjones@bakerdonelson.com  
W. Scott Welch  
swelch@bakerdonelson.com  
Samuel D. Gregory  
sdgregory@bakerdonelson.com  
P O Box 14167  
Jackson, MS 39236-4167  
Tel: (601) 351-2400  
Fax: (601) 351-2424

John S. Hicks  
jhicks@bakerdonelson.com  
211 Commerce Street  
Suite 800  
Nashville, TN 37201  
Tel: (615) 726-5600

*Attorneys for Defendant TeleSouth Communications,  
Inc.*

/s/ Robb S. Harvey, with permission

**WALLER, LANSDEN, DORTCH & DAVIS, LLP**

Robb S. Harvey  
robb.harvey@wallerlaw.com  
Todd R. Hambidge  
todd.hambidge@wallerlaw.com  
Nashville City Center  
511 Union Street  
Suite 2700  
Nashville, TN 37219  
Tel: (615) 244-6380  
Fax: (615) 244-6804

*Attorneys for Defendant T3 Media, Inc.*

/s/ Thomas B. Walsh, IV, with permission

**FISH & RICHARDSON P.C.**

Thomas B. Walsh, IV

walsh@fr.com

Thomas M. Melsheimer

melsheimer@fr.com

M. Brett Johnson

johnson@fr.com

Grant Schmidt

gschmidt@fr.com

*pro hac vice admissions pending*

1717 Main Street

Suite 5000

Dallas, TX 75201

Tel: (214) 747-5070

Fax: (214) 747-2091

- and -

**WISEMAN ASHWORTH LAW GROUP PLC**

Gail Vaughn Ashworth

gail@wisemanashworth.com

511 Union Street

Suite 800

Nashville, TN 37219-1743

Tel: (615) 254-1877

Fax: (615) 254-1878

*Attorneys for Defendant Learfield Sports LLC*

/s/ John S. Hicks, with permission

**BAKER, DONELSON, BEARMAN, CALDWELL  
& BERKOWITZ, PC**

John S. Hicks  
jhicks@bakerdonelson.com  
211 Commerce Street  
Suite 800  
Nashville, TN 37201  
Tel: (615) 726-5600

Walker W. Jones, III  
wjones@bakerdonelson.com  
W. Scott Welch  
swelch@bakerdonelson.com  
P O Box 14167  
Jackson, MS 39236-4167  
Tel: (601) 351-2400  
Fax: (601) 351-2424

- and -

**GIBSON, DUNN & CRUTCHER**

Robert C. Walters  
rwalters@gibsondunn.com  
Brian E. Robison  
brobison@gibsondunn.com  
2100 McKinney Avenue  
Suite 1100  
Dallas, TX 75201  
Tel: (214) 698-3100  
Fax: (214) 571-2900

*Attorneys for Defendant Outfront Media Sports, Inc.  
(f/k/a CBS Collegiate Sports Properties, Inc.)*



### **CERTIFICATE OF SERVICE**

I certify that on December 10, 2014, I caused the foregoing Licensing Defendants' Motion To Dismiss the Complaint to be electronically filed via the Court's CM/ECF System. Counsel for all parties will be served via the Court's CM/ECF system at the email addresses on file.

Date: December 10, 2014

/s/ W. Scott Sims